

HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Hospital Services; Independent Clinic Services; Prevocational Rehabilitation Services

Proposed Amendments: N.J.A.C. 10:66-1.2, 1.4, 2.7 and 6.2 and N.J.A.C. 10:52-2.10.

Proposed New Rule: N.J.A.C. 10:52-2.10A.

Authorized: by Gwendolyn L. Harris, Commissioner,
Department of Human Services.

Authority: N.J.S.A. 30:4D-6, 6a, 7, and 12.

Calendar Reference: See summary below for explanation of exception to the
rulemaking calendar requirements of N.J.A.C. 1:30-3.3.

Agency Control Number: 03-P-06

Proposal Number: PRN 2003 -

Submit comments by July 18, 2003 **to:**

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The agency proposal follows:

Summary

The Division of Medical Assistance and Health Services is proposing to amend N.J.A.C. 10:66, Independent Clinic Services, and N.J.A.C. 10:52, Hospital Services, to clarify current Medicaid and NJ FamilyCare requirements concerning reimbursement for pre-vocational services during hours of partial care and partial hospitalization, and to specify which activities are not reimbursable under the partial care and partial hospitalization programs. Additionally, technical changes have been made to replace “NJ KidCare” with “NJ FamilyCare” and “Medicaid District Offices” with “Medical Assistance Customer Centers.” Finally, the proposed amendment at N.J.A.C. 10:52-2.10 is intended to clarify for providers that partial hospitalization that may be prior authorized in increments of one hour, from a minimum of two hours per day to a maximum of five hours per day.

Summary of specific changes:

At N.J.A.C. 10:52-2.10 (d), a new paragraph 7 has been added, to clarify for providers that partial hospitalization may be prior authorized in increments of one hour, with a minimum of two hours per day and a maximum of five hours per day. Each hour is to be reflected as one unit for billing purposes.

At proposed new rule N.J.A.C. 10:52-2.10A, the Division is proposing to add the definitions “mental health services worker,” “pre-vocational services,” “special minimum

wage certificate," "therapeutic subcontract work activity," and "vocational services." The Division is also proposing specific language clarifying that education or school related activities and other interventions will not constitute covered psychiatric or pre-vocational services within the context of partial care programs. Examples of interventions that will not be approved for reimbursement are provided in the rules. The examples include technical or occupational skills training, college preparation, student education and individualized job development. The Division is proposing to clarify what services are considered mental health services and to specify that services such as student education, including preparation of school-assigned class work or homework or other incentive programs are not partial care mental health services and will not be reimbursed.

At N.J.A.C. 10:66-1.2, the Division is proposing to add the definitions "mental health services worker," "pre-vocational services," "special minimum wage certificate," "therapeutic subcontract work activity," and "vocational services."

At N.J.A.C. 10:66-1.4(c), the Division is specifying that, in addition to the other prior authorization requirements contained in N.J.A.C. 10:66-1.4, prior authorization must be obtained when payment to an independent clinic exceeds \$6,000 for a beneficiary.

At N.J.A.C. 10:66-1.4(c)1, the Division proposes to clarify that the prior authorization period for partial care services provided in an independent clinic shall not exceed 12 months.

At N.J.A.C. 10:66-1.4(c)2, the Division is amending the rule to change the entity which must perform the prior authorization function from the Division's mental health consultant to the Medical Assistance Customer Center responsible for the beneficiary's county of residence.

At N.J.A.C. 10:66-1.4(d)5, the Division is adding a clarifying phrase in order to distinguish the maximum prior authorization period for rehabilitative services (60 days) from the maximum prior authorization period for partial care (six months).

At N.J.A.C. 10:66-2.7, the Division is proposing specific language clarifying that education or school related activities and other interventions will not constitute covered psychiatric or pre-vocational services within the context of partial care programs. Examples of interventions that will not be approved for reimbursement are provided in the rules. The examples include technical or occupational skills training, college preparation, student education and individualized job development.

At N.J.A.C. 10:66-2.7(a), the Division is proposing to clarify what services are considered mental health services and to specify that services such as student education, including preparation of school-assigned class work or homework or other incentive programs are not partial care mental health services and will not be reimbursed.

At N.J.A.C. 10:66-2.7(b), the Division proposes amendments to the format and text of the existing rule that limits reimbursable mental health services to one per day per beneficiary, with the exception of medication management.

At N.J.A.C. 10:66-2.7(d), text has been added to clarify for providers that partial care may be prior authorized in increments of one hour, with a minimum of two hours per day and a maximum of five hours per day. Each hour is to be reflected as one unit for billing purposes.

Also at N.J.A.C. 10:66-2.7, the Division is proposing to add new subsections (e) through (i) to clarify the State's definition of vocational services to clearly distinguish these vocational services from those provided during pre-vocational training. Also, the Division is proposing to require a "special minimum wage certificate" and to specify the "therapeutic subcontract work activity" that will be recognized by the State when services are provided during partial care as pre-vocational therapy.

Subsection (f) lists the goals of the interventions, strategies and activities that will assist in the acquisition of work behaviors, attitudes and skills needed to take on the role of worker in other life domains. These include effective decision making, responding appropriately to criticism, managing psychiatric symptoms and adherence to prescribed medication directions and schedules.

Subsection (g) clarifies that vocational services will not be reimbursed by Medicaid and NJ FamilyCare and describes activities/services the Division considers vocational

services. Subsection (h), provides that, when the goals listed in subsection (f) have been met, the partial care program provider is required to update the treatment goals, revise the discharge plan and, as appropriate, refer the beneficiary to a community work environment.

Subsection (i) provides the requirements for therapeutic subcontract work activity when provided within the partial care program.

Existing subsections (e) through (g) have been recodified as (j) through (l) with no change in the text.

Existing subsection (h) has been recodified as (m) with amendments to paragraph 2, to substitute the word FamilyCare for KidCare, with no other change in the text.

At N.J.A.C. 10:66-6.2, HCPCS procedure code numbers and maximum fee allowance schedule, the Division has amended code L Z0170 to delete the rate of \$46.00 for a half day of partial care services and to add the rate of \$15.40 for one hour of partial care services. Code L Z0180, which is used for reimbursement for a full day of partial care services, at a rate of \$77.00, is being deleted entirely. Providers will now bill in hourly increments for partial care services, with a minimum of two hours per day and a maximum of five hours per day.

As the Division has provided a 60-day comment period for these proposed amendments and new rules, this proposal is excepted from the rulemaking calendar requirements of N.J.A.C. 1:30-3.3 (a) 5.

Social Impact

For State Fiscal Year 2002, annualized for the first six months of expenditures (July 1, 2001 through December 31, 2001), paid through June 30, 2002, a total of 101 partial care providers provided partial care services to 8,650 beneficiaries. For State Fiscal Year 2001, a total of 38 partial hospitalization providers provided services to a total of 5,472 beneficiaries.

The proposed amendments and new rule will have a positive social impact on Division beneficiaries who will receive appropriate and medically necessary pre-vocational services in partial care and partial hospitalization settings. Beneficiaries who have progressed through the pre-vocational program will be referred to appropriate vocational or other needed services.

The proposed amendments will have a positive social impact for providers of partial care programs because the requirements for provisions of pre-vocational services will be clarified.

Economic Impact

Partial hospitalization and partial care services are available to Medicaid and NJ FamilyCare beneficiaries on a fee-for-service basis. Beneficiaries are not required to contribute to the cost of the services, unless their eligibility category requires a contribution.

For State Fiscal Year 2002, annualized for the first six months of expenditures (July 1, 2001 through December 31, 2001), paid through June 30, 2002, total expenses were \$59,915,412. For State Fiscal Year 2001, total expenses were \$92,368, 524.

The economic impact on the Division as a result of these proposed amendments is expected to be positive, in that only eligible services will be reimbursed.

The proposed amendments would reduce Medicaid program costs proportionate to the number of entities or services that do not currently comply with the proposed criteria for participation as a provider of pre-vocational services, and which may have been billing incorrectly. The more detailed standards are expected to reduce the need for correction of billings, which should reduce administrative costs for the Division and the providers.

The amendments should also have a positive impact on providers because they will continue to be reimbursed for services which beneficiaries might not otherwise be able to afford.

There are no new costs to providers that are specifically associated with these amendments.

Federal Standards Statement

The State is required, under Federal regulations at 42 CFR 456.3, to implement a utilization control program to safeguard against unnecessary or inappropriate use of Medicaid and NJ FamilyCare services; however, the Federal regulations allow a State discretion in the implementation of the utilization control program. The proposed amendments clarify for providers which pre-vocational services within the partial hospitalization and partial care programs are deemed reimbursable (that is, specific pre-vocational services) and which services (that is, vocational) are not reimbursable. Federal standards at 42 CFR 440.180 prohibit Medicaid reimbursement for vocational services. This rulemaking conforms to, and does not exceed, these requirements.

Partial hospitalization and partial care services are available to Medicaid and NJ FamilyCare beneficiaries on a fee-for-service basis. Beneficiaries are not required to contribute to the cost of services, unless their eligibility category requires a contribution.

The Division has reviewed the Federal statutory and regulatory requirements and has determined that the proposed amendments do not exceed Federal standards.

Jobs Impact

The Division anticipates that the proposed amendments and new rule will have no impact on employment in the State of New Jersey.

Agriculture Industry Impact

These amendments are not expected to impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

The proposed amendment and new rule amending N.J.A.C. 10:52 will affect only hospitals, none of which are small businesses as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, the proposed amendments to N.J.A.C 10:66 will affect independent clinics that provide pre-vocational services during hours of partial care to beneficiaries residing in the community. Some of these clinic providers may be considered small businesses under the terms of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., and the following describes the impact on those which may be small businesses.

The amendments will impose some additional recordkeeping, compliance or reporting requirements on these small businesses. The providers are already required to maintain records which fully disclose the name of the beneficiary who received the

service, the date of service, and any additional information as may be required by N.J.A.C. 10:49 and N.J.S.A. 30:4D-1 et seq., therefore, any additional recordkeeping mandated by these amendments should have a minimal impact. These requirements are equally applicable to all providers regardless of business size. There has been no differentiation based on business size provided in the rules, because the records are the minimum required to ensure that only medically necessary services are provided.

Partial hospitalization providers are expected to adjust billing and prior authorization protocols to meet the requirements for the one hour increments of partial hospitalization billing required by these amendments; however, such compliance adjustments should be minimal.

Providers who may have received reimbursement for partial hospitalization services that were calculated at less than one billable hour will no longer be permitted to bill for program increments of less than one hour.

The amendments require that a mental health worker be part of the staff in a partial care prevocational program in order for the provider to receive Division reimbursement. The mental health services worker would be considered a professional, and therefore, these amendments require that certain specified professionals be employed by the provider.

There should be no capital costs associated with these requirements.

Smart Growth Impact

The Division does not anticipate that the proposed amendments will have any impact on the achievement of smart growth and implementation of the State Plan.

Full text of the proposed amendments and new rule follows (additions indicated in boldface **thus**; deletions indicated in brackets **[thus]**):

10:52-2.10 Psychiatric services; partial hospitalization

(a)-(c) (No change.)

(d) Prior authorization for PH from the Division shall be required after the first 30 calendar days from the date of the initial treatment. Each prior authorization for PH shall be granted for a maximum period of six months. Additional authorizations may be requested.

1.-6. (No change.)

7. The smallest unit of partial hospitalization that may be prior authorized by NJ Medicaid/FamilyCare is one hour, with a minimum of two hours per day and a maximum of five hours per day. For example, prior authorization for a full day of partial hospitalization (five hours) shall be reflected as five units, four hours shall be reflected as four units, a half day (three hours) shall be reflected as three units, and two hours shall be reflected as two units.

(e) Mental health services provided by or through the partial hospitalization program shall not include:

1. Student education, including preparation of school-assigned classwork or homework; or
2. Incentive programs, including but not limited to, token economies and non-therapeutic sub contract work responsibilities.

10:52-2.10A Psychiatric services; partial hospitalization prevocational programs

- (a) The provisions of this rule shall apply when prevocational services are provided within a partial hospitalization program, in accordance with N.J.A.C. 10:52-2.10(a)8.
- (b) The following words and terms, when used in this section, shall have the following meanings, unless the context indicates otherwise:

“Mental health services worker” means an individual who possesses a bachelor’s degree or associate’s degree in psychosocial rehabilitation or mental health services, or related life or work experience, such as assuming leadership roles during participation in mental health services or mental health consumer initiatives.

“Pre-vocational services” means interventions, strategies and activities within the context of a partial care program that assist individuals to acquire general work behaviors, attitudes and skills needed to take on the role of worker and in other life domains, such as: responding to criticism, decision making, negotiating for needs,

dealing with interpersonal issues, managing psychiatric symptoms and adherence to prescribed medication directions/schedules. Examples of interventions not considered pre-vocational or covered by Medicaid and NJ FamilyCare include: technical occupational skills training, college preparation, student education, including preparation of school assigned classwork or homework and individualized job development.

"Special minimum wage certificate" means a certificate issued by the U.S. Department of Labor pursuant to 29 C.F.R. section 525, which permits a worker with a disability to be paid at a rate below the rate which would otherwise be required by statute.

"Therapeutic subcontract work activity" means production, assembly and/or packing/collating tasks for which individuals with disabilities performing these tasks are paid less than minimum wage and, pursuant to 29 C.F.R. section 525, a special minimum wage certificate has been issued to the organization/program by the U.S. Department of Labor.

"Vocational services" means those interventions, strategies and activities that assist individuals to acquire skills to enter a specific occupation and take on the role of colleague (that is, a member of a profession) and/or assist the individual to directly enter the workforce and take on the role of an employee, working as a member of an occupational group for pay with a specific employer.

(c) The Division will reimburse a provider for prevocational services provided within the context of a partial hospitalization program, in accordance with this section.

(d) Prevocational services shall be those interventions, strategies and activities within the context of a partial hospitalization program that assist individuals to acquire general work behaviors, attitudes and skills needed to take on the role of worker and in other life domains, such as responding appropriately to criticism, decision making, negotiating for needs, dealing with interpersonal issues, managing psychiatric symptoms and medication adherence. Services or interventions which are not considered prevocational will not be reimbursed by the Medicaid/NJ FamilyCare programs. Examples of services or interventions not considered to be prevocational include:

1. Technical or occupational skills training;
2. College preparation;
3. Student education, including preparation of school-assigned classwork or homework; and
4. Individualized job development.

(e) The Division will not reimburse any provider for vocational services provided within the context of a partial hospitalization program.

1. Vocational services means those interventions, strategies and activities that assist individuals to acquire skills to enter a specific occupation and take on the role of colleague (that is, a member of a profession) and/or assist the individual to directly enter the workforce and take on the role of an employee, working as a member of an occupational group for pay with a specific employer.

(f) When, in the judgment of the treatment team, an individual is appropriate for discharge or referral to another employment-related service provider or situation, and, has demonstrated mastery of individualized goals and objectives, such as: an ability to respond appropriately to criticism, make decisions, negotiate for needs, deal with interpersonal issues, manage psychiatric symptoms and adhere to medication prescriptions, the service provider shall:

1. Update the individual treatment goal;
2. Revise the discharge plan; and
3. Refer the individual to a community work setting, if such referral is appropriate for the individual.

(g) The Division will reimburse prevocational services provided to eligible beneficiaries within the context of a partial hospitalization program when the services consist of therapeutic subcontract work activity, and when all of the following requirements are met:

1. The therapeutic subcontract work activity shall consist of production, assembly and/or packing/collating tasks for which individuals with disabilities performing these tasks are paid less than minimum wage, and, pursuant to 29 C.F.R. section 525, a special minimum wage certificate has been issued to the organization/program, by the U.S. Department of Labor;

2. The individual's plan of care shall contain a stipulation that the therapeutic subcontract work activity is a form of intervention intended to address the individual deficits of the patient as identified in the client's assessment;

3. The therapeutic subcontract work activity shall be facilitated by a qualified mental health services worker;

4. The therapeutic subcontract work activity shall be performed within the line of sight of the qualified mental health services worker; and

5. The staff to client ratio shall not exceed a ratio of 1:10 qualified mental health services worker to client.

10:66-1.2 Definitions

The following words and terms, when used in this chapter, **shall** have the following meanings, unless the context indicates otherwise.

...

“Mental health services worker” means an individual who possesses a bachelor’s degree or associate’s degree in psychosocial rehabilitation or mental health services, or related life or work experience, such as assuming leadership roles during participation in mental health services or mental health consumer initiatives.

...

“Pre-vocational services” means interventions, strategies and activities within the context of a partial care program that assist individuals to acquire general work behaviors, attitudes and skills needed to take on the role of worker and in other life domains, such as: responding to criticism, decision making, negotiating for needs, dealing with interpersonal issues, managing psychiatric symptoms and adherence to prescribed medication directions/schedules. Examples of interventions not considered pre-vocational or covered by Medicaid and NJ FamilyCare include: technical occupational skills training, college preparation, student education, including preparation of school assigned classwork or homework and individualized job development.

...

“Special minimum wage certificate” means a certificate issued by the U.S. Department of Labor pursuant to 29 C.F.R. section 525, which permits a worker

with a disability to be paid at a rate below the rate which would otherwise be required by statute.

"Therapeutic subcontract work activity" means production, assembly and/or packing/collating tasks for which individuals with disabilities performing these tasks are paid less than minimum wage and, pursuant to 29 C.F.R. section 525, a special minimum wage certificate has been issued to the organization/program by the U.S. Department of Labor.

"Vocational services" means those interventions, strategies and activities that assist individuals to acquire skills to enter a specific occupation and take on the role of colleague (that is, a member of a profession) and/or assist the individual to directly enter the workforce and take on the role of an employee, working as a member of an occupational group for pay with a specific employer.

10:66-1.4 Prior Authorization

(a) (No change)

(b) Dental services require prior authorization as indicated in the New Jersey Medicaid and NJ [KidCare] **FamilyCare** fee-for-service programs' Dental Services chapter, N.J.A.C. 10:56.

(c) **In addition to the other requirements of this rule,** [M] **mental health services** provided to each Medicaid or NJ [KidCare] **FamilyCare** fee-for-service beneficiary require prior authorization when payment to an independent clinic exceeds \$6,000 for that Medicaid or NJ [KidCare] **FamilyCare** fee-for-service beneficiary in any 12-month period, commencing with the beneficiary's initial visit.

1. The maximum period of authorization [is up to] **shall not exceed** 12 months for all mental health services. Additional authorizations may be requested.

i. The maximum period of authorization for partial care shall not exceed six months.

2. When requesting prior authorization, Form FD-07, Request for Authorization of Mental Health Services, shall be completed and forwarded to: [Mental Health Consultant, Division of Medical Assistance and Health Services, Mail Code # 18, PO Box 712, Trenton, New Jersey 08625-0712] **the Medical Assistance Customer Center (MACC) for the county in which the beneficiary resides.** See the Fiscal Agent Billing Supplement, N.J.A.C. 10:66--Appendix, for instructions on the completion of the prior authorization form.

3.– 4. (No change.)

5. The maximum period of authorization [is] **for rehabilitative services shall be** 60 days.

i. Reauthorizations for periods not exceeding 60 days may be approved by the

[MDO] **MACC** when the request is supported by:

(1) - (3) (No change.)

(No change.)

(d) (No change.)

(e) Vision care services require prior authorization as indicated in the New Jersey Medicaid and NJ [KidCare] **FamilyCare** fee-for-service programs' Vision Care Services chapter, N.J.A.C. 10:62.

10:66-2.7 Mental health services

(a) Mental health services **shall** include [:] comprehensive intake evaluation, individual psychotherapy, off-site crisis intervention, family therapy, family conference, group psychotherapy, psychological testing, partial care, and medication management. **Mental health services shall not include:**

1. Student education, including preparation of school-assigned classwork or homework; or

2. Incentive programs, including but not limited to, token economies and non-therapeutic sub contract work responsibilities.

(b) Only one type of mental health service per beneficiary [is] **shall be** reimbursable to an independent clinic per day [. Exception:], **with the following exception:**

1. Medication management may be reimbursed when provided to a Medicaid or NJ [KidCare] **FamilyCare** fee-for-service beneficiary in addition to one of the following mental health services: individual psychotherapy, group psychotherapy, family therapy, and family conference.

(c) (No change.)

(d) For purposes of partial care, full day means five or more hours of participation in active programming exclusive of meals; half day means at least three hours but less than five hours of participation in active programming exclusive of meals. **The smallest unit of partial care that may be prior authorized by NJ Medicaid/FamilyCare is one hour, with a minimum of two hours per day and a maximum of five hours per day. For example, prior authorization for a full day of partial care (five hours) shall be reflected as five units, four hours shall be reflected as four units, a half day (three hours) shall be reflected as three units, and two hours shall be reflected as two units.** Additional details are located at N.J.A.C. 10:66-6.

(e) The Division shall reimburse a provider for pre-vocational services provided within the context of a partial care program.

(f) Pre-vocational services shall be interventions, strategies and activities within the context of a partial care program that assist individuals to acquire general work behaviors, attitudes and skills needed to take on the role of worker and in

other life domains, such as responding appropriately to criticism, decision making, negotiating for needs, dealing with interpersonal issues, managing psychiatric symptoms and medication adherence. Services or interventions which are not considered pre-vocational will not be reimbursed by Medicaid and NJ FamilyCare. Examples of services or interventions not considered to be pre-vocational include:

1. Technical or occupational skills training;
2. College preparation;
3. Student education, including preparation of school-assigned classwork or homework; and
4. Individualized job development.

(g) The Division will not reimburse any provider for vocational services provided within the context of a partial care program.

1. Vocational services shall be those interventions, strategies and activities that assist individuals to acquire skills to enter a specific occupation and take on the role of colleague (that is, a member of a profession) and/or assist the individual to directly enter the workforce and take on the role of an employee, working as a member of an occupational group for pay with a specific employer.

(h) When, in the judgment of the treatment team, an individual is determined appropriate for discharge or referral to another employment-related service provider or situation, and has demonstrated mastery of individualized goals and objectives, such as: an ability to respond appropriately to criticism, make decisions, negotiate for needs, deal with interpersonal issues, manage psychiatric symptoms and adhere to medication prescriptions, the service provider shall:

1. Update the individual treatment goal;
2. Revise the discharge plan; and
3. Refer the individual to a community work setting, if such referral is appropriate for the individual.

(i) The Division will reimburse a provider for prevocational services provided to eligible beneficiaries within the context of a partial care program when the services consist of therapeutic subcontract work activity, and when all of the following requirements are met:

1. The therapeutic subcontract work activity shall consist of production, assembly and/or packing/collating tasks for which individuals with disabilities performing these tasks are paid less than minimum wage, and, pursuant to 29 C.F.R. section 525, a special minimum wage

certificate has been issued to the organization/program by the U.S. Department of Labor;

2. The individual's plan of care shall contain a stipulation that the therapeutic subcontract work activity is a form of intervention intended to address the individual deficits of the patient as identified in the client's assessment;

3. The therapeutic subcontract work activity shall be facilitated by a qualified mental health services worker;

4. The therapeutic subcontract work activity shall be performed within the line of sight of the qualified mental health services worker; and

5. The staff to client ratio shall not exceed a ratio of 1:10 qualified mental health services worker to client.

Recodify (e) - (g) as (j) - (l) (No change in text.)

[h] (m) Periodic review of the beneficiary's plan of care shall take place on a regular basis (at least every 90 days during the first year and every six months thereafter).

1. (No change.)

2. Periodic reviews shall be documented in detail in the beneficiary's records and made available upon request to the New Jersey Medicaid or NJ **[KidCare] FamilyCare** program or its agents.

10:66-6.2 HCPCS procedure code numbers and maximum fee allowance schedule

HCPCS		Follow Up	Maximum Fee Allowance		Anes. Basic
Ind	Code	Mod	Days	S	\$ NS Units

(a) - (e) (No change.)

(f) Mental health services:

• • •

L	Z0170		[46.00]	<u>15.40</u>	[46.00]	<u>15.40</u>
[L	Z0180			77.00		77.00]

(g) - (p) (No change.)

Gwendolyn L. Harris, Commissioner
Department of Human Services

Date